THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APLICATION NO. 251 OF 2024

MASSALIA-SMC LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. PROSCOVIA REBECCA NAMBI, MRS. STELLA NYAPENDI CHOMBO.

RULING

This ruling is in respect of an application challenging additional tax assessments for Gaming Tax, Betting Tax and Withholding Tax all amounting to UGX 28,129,806,328 for the period January 2023 to August 2023. The assessments were based primarily on data obtained from third-party platforms — MTN, Airtel, and Pegasus.

1. Background

The Applicant is a Ugandan company engaged in gaming and sports betting activities, which are dependent on internationally renowned virtual gaming developers and live international sporting activities. The Applicant conducts these activities through its online platform (mobile.fortebet.ug) and land-based shops. The Respondent conducted an audit of the Applicant's activities for the period of January to August 2023. Following this audit, the Respondent issued tax assessments to a tune of Shs. 28,129,806,328, covering Gaming Tax, Betting Tax, and Withholding Tax.

The assessments were based on "source data" obtained from MTN, Airtel, and Pegasus. This data was acquired through the Telecommunications Intelligence Monitoring System (TIMS), operated by the Government of Uganda, which provides live access to various telecom systems.

The Applicant objected to the assessments, arguing that the Respondent's methodology, based on the assumption that all deposits are stakes and all withdrawals are pay outs, is erroneous. On 30 August 2024, the Respondent issued its objection decision disallowing the objection whilst citing the Applicant's failure to provide sufficient supporting information. Thus, this application before the Tribunal.

2. Issues for Determination

The parties agreed on two issues for determination by the Tribunal:

(i) Whether the Applicant is liable to pay the tax as assessed by the Respondent?

(ii) What are the remedies available to the parties?

3. Representation

The Applicant was represented by Mr. Tom Samuel Magezi and Ms. Aretha Uwera from Tumusiime Kabega & Co. Advocates while the Respondent was represented by Ms. Gloria Twinomugisha, Ms. Charlotte Katuutu, Mr. Simon Peter Orishaba all from the Legal Services and Board Affairs Department.

The Applicant's case

The Applicant presented two witnesses: AW1 (Vaclav Rychtarik, a Director of Apollo Soft SRO, the provider of the Applicant's betting and gaming software) and AW2 (Francis Xavier Drani, a tax consultant of the Applicant).

AW1 testified that Apollo Soft SRO has operated for over 35 years and provides software solutions for online gaming and betting services to clients in over 40 countries. The witness stated that Apollo Soft SRO is the exclusive provider of gaming and betting software to the Applicant, and that Apollo Soft SRO is responsible for the development, supply, and maintenance of the online platform used by the Applicant.

AW1 explained that as part of its role, Apollo Soft SRO retains all intellectual property rights over the systems it provides, and critically, maintains full control over all data relating to stakes and pay outs arising from the Applicant's betting and gaming

activities. He affirmed that the Applicant does not independently access or manage this data, which is housed and exclusively controlled by Apollo Soft SRO.

The witness testified that on 2nd December 2024, Apollo Soft SRO received a formal joint request from both the Applicant and the Respondent, asking for raw transactional data for the period January 2023 to August 2023. In response, and on behalf of Apollo Soft SRO, the witness submitted the requested raw data via email (AEX5) on the same day—2nd December 2024. AW1 testified that the Respondent neither acknowledged nor responded to the email communication forwarding the raw data. Furthermore, the Respondent did not challenge or question the raw data provided, nor did they request any clarification from AW1. AW1 admitted that this specific data format had never been used in the gaming industry before, and that the Applicant was effectively being used as a "test case"

He stated that the format in which Apollo Soft SRO maintains raw data for its clients includes daily entries for total stakes and total pay outs. This same format was used to generate and transmit the data provided to the Applicant and the Respondent. The witness confirmed that this raw data covered all betting and gaming transactions for the requested period and accurately reflected the gaming operations conducted through the Applicant's online platform.

During cross examination, AW1 confirmed that Apollo soft has a duty to provide gaming activity data to the Applicant and that the Apollo soft system interfaces with the Applicant's system. The witness also clarified that the data that the Applicant provided contained aggregate day to day transactions (transactions conducted every 24 hours) but did not contain each individual transaction separately.

He further testified that due to the high volume of daily transactions, their system is not designed to extract details for each individual transaction. AW1 explained that obtaining individual transaction details would necessitate access to each account within a portfolio of over a million individuals, which is deemed not feasible given the scale of operations.

Further, the witness explained that the Apollo Soft system is not able to provide transactional data for the period January – August 2023 as this was an "old" period and the system is formatted for day by day reporting for every country they operated it.

AW2, Mr. Drani, testified that the Applicant was a Ugandan company engaged in gaming and sports betting activities. He confirmed that the Applicant, Massalia SMC Ltd, operates under the trade name Fortebet, and is licensed to engage in gaming and sports betting activities in Uganda.AW2 explained that the Applicant's online operations were conducted exclusively through its online betting platform (https://mobile.fortebet.ug,) which relied entirely on its software provider, Apollo Soft SRO, a software company registered in the Czech Republic. He emphasized that all information related to stakes and payouts was exclusively managed by Apollo Soft SRO, meaning the Applicant did not run its own systems for this data. Further, the witness emphasized that the Applicant does not operate or control this data infrastructure but relies entirely on Apollo Soft SRO. Thus, any assessment relying on MTN, Airtel, or Pegasus data alone, without reference to Apollo Soft data, would be inaccurate.

The witness explained that punters were required to register for an account using a national ID and a mobile number registered with MTN or Airtel that matches their ID. All deposits and winnings are credited to the punter's online account, which is maintained on the Apollo Soft platform. He stated that deposits were made either via USSD codes or through the punter's online account interface. Crucially, AW2 pointed out that while MTN, AIRTEL, and PEGASUS platforms displayed deposits and withdrawals, they could not distinguish between stakes and payouts and that only Apollo Soft's system can distinguish between stakes and payouts.

AW2 stated that the Respondent had conducted an audit for the period from January 2023 to August 2023. Subsequently, the Respondent issued tax assessments totaling UG.SHS 28,129,806,328/=, broken down into: Gaming Tax (UGX 1,898,678,692/=), Betting Tax (UGX 6,985,710,363/=), and Withholding Tax (UGX 19,245,417,273/=). He testified that the Respondent based its assessment on data obtained from MTN, Airtel, and Pegasus, but failed to distinguish between deposits and stakes, or between withdrawals and payouts.

The witness testified that the Applicant objected to the assessments via a letter dated 30th August 2024, asserting that not all deposits constituted stakes and not all withdrawals were payouts. In support, the Applicant submitted correspondence to URA

dated 28th June, 18th July, and 30th August 2024, requesting clarity on the source data and sharing preliminary reconciliations.

Mr. Drani contended that despite a Tribunal directive, the Respondent had failed to provide the requested "raw source data" to the Applicant, instead re-sharing "workings" that he maintained were manual entries and not true "raw source data".

According to the witness, instead of complying, the Respondent instead submitted revised spreadsheets containing a tab labelled "source data," with manually inserted summaries of "MTN collections," "Airtel collections," "Aggregator collections," and "Total payouts." Mr. Drani emphasized that these summaries were URA's internal computations and did not constitute the raw data ordered by the Tribunal.

He highlighted the Respondent's misinterpretation of "raw source data" and erroneous assumptions, specifically that all deposits on MTN and AIRTEL platforms were stakes, and all withdrawals were payouts for winnings. The witness further stated that, on the same day of 24th February 2025, the witness himself conducted a live demonstration before the Tribunal using his personal betting account. He showed that punters could deposit and withdraw funds without placing bets, disproving the Respondent's assumptions that all deposits were stakes and all withdrawals were payouts. He added that the Respondent's own assessing officer conceded during this session that such assumptions were erroneous.

He also noted that on 12 February 2025, the Respondent's Assessing Officer confirmed to the Tribunal that not all deposits on AIRTEL and MTN platforms were stakes, and not all withdrawals were payouts. AW2 further elaborated on the applicable legal framework. He stated that, for the period up to 30th June 2023, Gaming Tax was computed at 20% of the net win (stakes minus payouts). From 1st July 2023, Betting Tax and Gaming Tax became separate, levied at 20% and 30% respectively on relevant bases. Withholding Tax of 15% applied to gross payouts until 30th June 2023 and, from 1st July 2023, applied only to winnings from betting—not all withdrawals.

Mr. Drani testified that the Respondent had erroneously computed and levied Betting Tax for the period 1st January 2023 to 30th June 2023, when the law did not impose such a tax. He further stated that the Respondent had never disclosed any underlying data on stakes or payouts used in its assessments. As a result, the Applicant's own

data reconciliation was essential. He testified that following the Respondent's request, Apollo Soft SRO had provided raw data via email to the Respondent on 2nd December 2024. This raw data from Apollo Soft included stakes and payouts with corresponding dates.

According to his testimony, the said data, which included daily records of stakes and payouts, formed the basis of the Applicant's reconciliation. AW1 explained that the discrepancy between the original tax returns and the raw data was due to a time zone mismatch—Apollo Soft SRO operates in Central European Time (GMT+1), two hours behind East Africa Time (GMT+3). According to the witness, this led to daily omissions of two hours of transaction data, specifically from 10:00PM to midnight. Once this was corrected, the Applicant arrived at a reconciled tax position. Mr. Drani also asserted that the Respondent had not presented any raw data that contradicted the data provided by Apollo Soft.

The witness presented a list of payments the Applicant had made to the Respondent, totaling Ugx 4,700,000/= for Gaming Tax. He stated that the Applicant's revised tax liability was UGX 3,613,714,638/= in Gaming Tax and UGX 910,900,015/= in Withholding Tax, leading to a total tax liability of UGX 4,407,761,726/=. He asserted that this total tax liability had already been paid by the Applicant to the Respondent. Betting Tax for the disputed period was not applicable, and the Applicant had instead overpaid Betting Tax by Shs. 116,852,972.

He testified that the Respondent nevertheless proceeded to issue agency notices on punter wallets, leading to unauthorized deductions totaling Shs. 8,752,159,033 by 20th September 2024. He maintained that this enforcement was unlawful and premature, given the unresolved status of the assessment and ongoing proceedings before the Tribunal. The witness stated that the Applicant's true tax liability of Shs. 4,407,761,726 had already been paid.

Finally, AW2 testified that the Applicant was entitled to a refund of the excessive tax wrongly computed and collected by the Respondent, along with corresponding interest, and also sought the costs of the Application.

During cross examination, AW2 stated that he was neither involved in the audit nor the objection process and only got involved when the matter was referred to ADR. He also confirmed that the Applicant does not own the data on the Apollo Soft software and

this data is owned by Apollo Soft but the Applicant is entitled to get the data. He confirmed that the Applicant is able to distinguish stakes and payouts in their system from the data availed from Apollo Soft.

AW2 also testified that the Applicant did not amend its returns to reflect the transactions which were omitted due to the varying time zones because the period was under audit and the URA portal did not allow for return amendment. However, the paid the additional tax that arose from the omission.

The Respondent's case

The Respondent presented three witnesses: **RW1 (Mr. Samuel Mukobe, a Supervisor in the Large Taxpayers Office, in the Respondent's Domestic Taxes Department), RW2 (Javan Sabiiti Ivan, an officer in the Independent Review of Objections (IRO) Unit of the Domestic Taxes Department), and RW3 (Grace Aine Ngabirano, Manager Tax Risk, in the Strategy and Risk Management Department** and previously held the position of Manager, Special Projects, in the Respondent's Domestic Taxes Department.

RW1 testified that participated in the return examination of the Applicant and noted that the Applicant operates in the sports betting and gaming industry in Uganda. They operate both online via their website fortebet.ug and through land-based shops across the country where people engage in physical gaming and that the transactions in the shops are cash-based.

RW1 testified that the return examination in question related only to the online transactions via the Applicant's website and the platforms of MTN, Airtel, and Pegasus Technologies and land-based shop transactions were not considered.

RW1 testified that the Respondent obtained data on the Applicant's gaming and betting activities from third parties, namely Pegasus Technologies, MTN Uganda Limited, and Airtel Uganda Limited. Upon reviewing this third-party data, the Respondent established there were huge variances between the third-party data and the Applicant's declarations.

He stated that the Respondent relied on the available third-party data to issue the additional assessments for Gaming, Betting, and Withholding Tax totaling UGX 28,129,806,328. He states that the assessments are lawful and fair and were made considering the minimum data available. And he stated that the assessment calculations also did not consider the rebate/restake factor. RW1 described a scenario where a punter deposits UGX 1,000,000, wins UGX 500,000, and withdraws UGX 1,500,000. In this scenario, the Respondent's workings treated the entire UGX 1,500,000 as winnings for the purpose of computing the Applicant's tax liability. He reiterates that restakes were not considered in their workings since such transactions are known only to the Applicant and not captured by the third party.

Regarding withdrawals, he states it is not true that people deposit money and withdraw it without staking or betting. People deposit money into their betting/gaming account for the purposes of staking. RW1 concludes his statement by asserting that the Applicant is liable to pay the tax as assessed.

During cross examination, RW1 stated that not all withdrawals were wins and not all deposits are stakes. He testified that they did not have information on withdrawals made by punters and that they did not consider the withdrawals because their focus was on payments which showed a taxing point. RW1 further stated that it would not be correct to treat all deposits as stakes, however, in the Applicant's case, since the Applicant is the largest land better with over 500 shops, they relied on the online data as minimum data indicative of stakes. RW1 also stated that they received data from the Applicant via email but its authenticity was questionable. The witness also confirmed that the Respondent did not reply to Apollo Soft email nor notify the Applicant of their concerns about the authenticity of the data.

RW2, Mr. Javan Sabiti, stated that he was directly involved in handling the Applicant's objection to the tax assessments at the centre of the dispute and was therefore well acquainted with the facts of the case. RW2 explained that the Applicant, a sports betting and gaming operator, had objected to URA's tax assessments on the basis that not all deposits made by punters were stakes, and similarly, not all withdrawals were necessarily payouts.

The witness stated that the Applicant appeared to argue that the raw figures relied on by the Respondent (particularly those drawn from aggregators like Pegasus) did not

reflect the true taxable base because they did not account for internal transactions such as cash-outs, bet cancellations, or reversals.

In response to the objection, the Respondent requested the Applicant to provide supporting documentation. The Applicant submitted a reconciliation report for the month of May 2023, showing comparisons between deposits, withdrawals, stakes, and payouts. The witness stated that the Respondent found the reconciliation to be inconclusive and unverifiable. Consequently, the Respondent requested additional documentation, including ledgers for collections and payouts, raw betting and gaming data with key fields, bank statements for the assessed periods, and audited accounts. This request was formally communicated via email.

RW2 testified that the Applicant provided limited data, stating it could not retrieve further records due to its betting system being managed by a third party. As a result, the Applicant lacked full access to its own transaction records, which hindered the Respondent's ability to verify its claims.

The witness stated that due to the Applicant's failure to provide sufficient documentation, the Respondent issued an objection decision dated 30th August 2024 disallowing the objection in full. Further, the witness stated that the basis for rejecting the objection was the Applicant's non-disclosure of critical information required to substantiate its claims against the assessment.

RW3, Grace Aine stated that in his prior role, he was responsible for overseeing tax compliance in sectors such as telecommunications, gaming, high-net-worth individuals, and VIP taxpayers. He confirmed that he was personally involved in the review and assessment of the Applicant's tax affairs and was fully conversant with the facts of the case.

The witness further testified that the Respondent assessed financial transactions using third-party data from telecommunications providers MTN and Airtel, along with Pegasus Technologies Ltd, a financial aggregator. According to his witness statement, this data was obtained via the Telecommunications Intelligence Monitoring System (TIMS), which the Respondent accesses under an inter-agency framework led by the Directorate of Revenue.

The witness stated that on 19th September 2023, the Respondent formally requested financial data from third-party platforms, including Pegasus Technologies Ltd, through official correspondence. According to the witness and in response to the above request, Pegasus provided records detailing total collections, withdrawals, wallet replenishments, and fund movements for the Applicant's punters.

RW3 testified that given the large file size, the Respondent stored the raw transactional data electronically (during trial the Respondent shared this date with the Tribunal via Safe File Transfer Protocol (SFTP). Using this data, the Respondent compiled categorized summaries and spreadsheets under sections such as "MTN collections," "Airtel collections," "Aggregator collections," and "Total pay outs," which were then shared with both the Applicant and the Tribunal during trial of this case.

RW3 further testified that the Respondent's analysis of this data revealed significant discrepancies between the Applicant's declared tax returns and the third-party figures. He explained that the comparison showed the Applicant had declared only about 14% of the volumes captured from MTN, Airtel, and Pegasus data. The witness emphasized that this meant that 86% of the activity remained undeclared, justifying the issuance of additional assessments. He clarified that this analysis excluded land-based or cash transactions, which the Respondent reserved for a separate assessment.

The witness explained that the Respondent issued a compliance advisory to the Applicant via email on 9th November 2023, advising the company to amend its tax returns to reflect the true level of its activities based on the third-party data. The Applicant, RW3 testified, did not submit amended returns for the entire period in dispute.

To help the Tribunal understand the transactional flow of gaming and betting activities, the witness presented a transactional process flowchart wherein he stated that punters were required to open an account on the Applicant's platform, which is operated by Apollo Soft SRO. Accordingly, this registration involved providing a national ID and a mobile number, typically from MTN or Airtel, which was verified to ensure consistency. Deposits were made through mobile money providers and processed via aggregator platforms like Pegasus. Upon successful deposit, punters placed bets using the credited balances.

RW3 explained that the Applicant's gaming platform allowed punters to bet on various sports or games, with transactions resulting in one of four outcomes: win, loss, void, or early cash-out. The witness stated that wins led to pay outs, losses meant the stake was retained, voids returned the stake to the punter, and early cash-outs provided partial credits. He also noted that winnings could be reused for further bets through "re-staking," which increased overall betting activity.

He further stated that the Respondent's tax treatment distinguished between different stages of the betting transaction. Specifically, gaming tax applied when the punter lost a bet, and was payable by the Applicant, while withholding tax applied to the punter's winnings and was deductible at the point of pay-out. The witness further emphasized that the Respondent required withholding tax to be deducted on each successful bet, including repeated wins arising from re-staking.

Mr. Ngabirano admitted that URA was unable to access raw data on stakes and pay outs from the Applicant's betting platform, as this information was maintained by Apollo Soft SRO. According to the witness, consequently, the Respondent based its assessment on the financial inflows and outflows reflected in the Pegasus, MTN, and Airtel datasets.

The witness acknowledged that these third-party systems could not distinguish between deposits and stakes or between pay outs and simple withdrawals, and that the lack of stake-specific data was a limitation. Nevertheless, he defended the assessment as a "conservative estimate," made using the "best available data."

He contended that the Respondent only assessed online operations and excluded all cash-based transactions, such as those made over-the-counter at betting shops or kiosks. The witness insisted that the data from the telecom and aggregator platforms constituted a reliable, independent benchmark for auditing the Applicant's operations, especially since the Applicant had refused to disclose timely and complete transactional records from its software provider, Apollo Soft SRO. The witness confirmed that he did not look at the data from Apollo Soft.

4. Submissions of the Applicant

The Applicant contended that the Respondent's total tax assessment of UGX 28,129,806,328/= was excessive, erroneous, and unlawful. They argued that the Respondent had misinterpreted Section 48(1) and the 4th Schedule of the Lotteries and Gaming Act, Cap 334, by mistakenly treating all deposits as stakes and all withdrawals as payouts for winnings. The Applicant asserted that this misinterpretation of the enabling law invalidated the assessed Gaming Tax of UGX 1,898,678,692/= and Betting Tax of UGX 6,985,710,363/=. They further submitted that the Respondent had failed to apply the correct tax rates (30% for Gaming Tax and 20% for Betting Tax) to the actual net difference between stakes and payouts for winnings, leading to an incorrect and excessive assessment. They emphasized that the Respondent's methodology disregarded the legal requirement for computing Gaming and Betting tax based on "the difference between stakes and payouts (winnings), not on gross deposits or withdrawals".

The Applicant further stated that Section 19 of the Tax Appeals Tribunal Act, Cap 341, places the burden of proof on them to demonstrate that the Respondent's tax assessment was excessive and/or that the assessment should have been made differently.

The Applicant submitted that based on accurate and reliable data from Apollo Soft as the Applicant's witnesses (AW1 and AW2) testified, the accurate tax liability should be significantly lower. They calculated the accurate tax liability as Gaming Tax of UGX 3,613,714,638/=, Betting Tax UGX 0/=, as no tax liability was due for Betting tax, Withholding Tax of UGX 910,900,015/= with the total actual tax liability being UGX 4,407,761,726/=

Regarding data accuracy and reliability, the Applicant submitted that AW2 demonstrated that not all deposits were stakes, nor were all withdrawals necessarily payouts for winnings.

The Applicant emphasized that Apollo Soft, whose system exclusively manages their gaming and betting activities, provides weekly data on stakes and payouts, which they use for tax returns. They submitted that AW1 and AW2 provided more reliable and

accurate data regarding stakes, restakes, and payouts for winnings. AW1 further testified that Apollo Soft submits raw data by recorded stakes and payouts, a format that is acceptable in other countries. The Applicant directly submitted raw data from Apollo Soft (AEX 6) to the Respondent. They stressed that Apollo Soft processes approximately 5 million transactions daily, and its system provides daily aggregate figures as the standard format used across all jurisdictions.

The Applicant maintained that their raw data (AEX 6) remained unchallenged, credible, and reliable for determining tax liability. They cited **Samwiri Massa v Rose Achieng HCB 297**, which held that unchallenged, controverted evidence must be admitted as true. They pointed out that the Respondent had failed to produce independent expert evidence to challenge the credibility of Apollo Soft's system, data, and operations.

The Applicant argued that Withholding Tax should strictly apply to payouts from winning determined as payments to the punter less the amount staked, and not general withdrawals. They cited **Section 131, Part XIV of the Income Tax Act, Cap 338,** which stipulates that "Withholding Tax applies only to gross payments of winnings from betting activities." This provision mandates the charging of Withholding Tax only on "payouts for winnings, which winnings are to be determined as the payments made to the punter less the amount staked."

They contended that the Respondent's assessment of Withholding Tax was flawed, excessive, and based on a misinterpretation of the law by failing to distinguish between withdrawals and actual payouts for winnings. To support their interpretation, they referred to **HC ITA No. E003 of 2019, Commissioner of Domestic Taxes v. Pevans E.A Ltd and 6 others**, where the Kenyan High Court confirmed that winnings are "the payments made to the punter less the amount staked, and it is these winnings that are subject to tax."

The Applicant asserted that the Respondent's enforcement of tax collection via Agency Notices on Punters' deposits with MTN, Airtel, and Pegasus was unjustifiable because these sums were the property of the Punters unless staked. They stated that the Respondent had wrongfully collected UGX 8,752,159,033/= from punters' deposits via Agency Notices, to their detriment. They argued that the entities served with agency notices (MTN, Airtel, Pegasus) could not distinguish between a deposit and a

stake and thus were not competent to receive such notices, as they held punters' deposits, not the Applicant's funds. The Applicant maintained that the issuance of these notices was based on an erroneous misinterpretation of treating all deposits as stakes, an error which the Respondent's witnesses confirmed.

The Applicant submitted that this overreaching interpretation resulted in an excessive and unlawful tax liability, contrary to the well-established principle that tax statutes must be interpreted strictly in accordance with the legislature's intention, as reinforced by **Kinyara Sugar Ltd v Commissioner General Uganda Revenue Authority (HCCS 73 of 2011) UGCommC 114 [3.20].**

The Applicant prayed the Tribunal to set aside and vacate the Respondent's tax assessment of UGX 28,129,806,328/= as legally flawed, excessive, and based on misinterpreted data. They also asked the Tribunal to uphold the Applicant's tax computations for a total liability of UGX 4,407,761,726/=, based on precise, industry-standard data on stakes, restakes, and winnings provided by Apollo Soft and confirmed by AW1 and AW2. They requested the Tribunal to direct the Respondent to refund all monies unlawfully collected through agency notices that were in excess of the correctly computed tax liability of UGX 4,407,761,726/= and to restrain the Respondent from issuing Agency Notices on deposit collection accounts of punters held with MTN, Airtel, and Pegasus regarding the disputed tax assessment, as these funds did not belong to the Applicant. The Applicant also prayed to be awarded costs.

5. Submissions of the Respondent

The Respondent submitted that their tax assessments against Massalia-SMC Limited for Gaming Tax, Betting Tax, and Withholding Tax, totalling UGX 28,129,806,328/=, were lawful, fair, and based on information obtained from the platforms.

The Respondent submitted that the burden of proof is on the Applicant to demonstrate that their assessments were incorrect or erroneous, or that the taxation decision should have been made differently. They cited **Section 28 of the Tax Procedures Code Act Cap. 343 and Section 19 of the Tax Appeals Tribunal Act Cap 341**, which both state that the burden is on the taxpayer to prove that the assessment is incorrect, or the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently.

They submitted that this position was reiterated by **Section 101 of the Evidence Act Cap 8** and the case of **Williamson Diamonds Ltd VS. Commissioner General 4 TTLR 167**, where the Tax Revenue Appeals Tribunal of Tanzania held that *"the burden of proving that the assessment issued by the Respondent is excessive or erroneous lies on the tax payer (appellant) and in no way may it be shifted to the Respondent."* The Respondent asserted that the Applicant failed to discharge this burden.

The Respondent submitted that the Applicant was repeatedly requested for documentation to support its objection but it did not avail the required documentation.

In relation to Withholding Tax, the Respondent relied on Sections 118 to 123 of the Income Tax Act, which outline the obligations of entities to withhold taxes from payments made to persons engaged in certain activities, including betting and gaming. Counsel submitted that the Applicant had not fulfilled its obligation to withhold tax on certain payments, and as such, the URA's assessment was correct.

Section 118 of the Income Tax Act defines the obligations to withhold tax:

"A person who makes a payment to another person in respect of any service or goods must withhold the tax at the prescribed rate, and remit it to the Uganda Revenue Authority."

The Respondent argued that the Applicant had failed to comply with these provisions, leading to the assessment of the withholding tax due.

The Respondent asserted that the basis of the assessment was sound and was conducted following the law, with due regard to the documents and returns submitted by the Applicant.

They submitted that the assessments for the period January 2023 to August 2023 were based on data received from the platforms of MTN, Airtel, and the Applicant's Aggregator-Pegasus. They contended that the Applicant's return declarations were compared with data from these platforms, which revealed undeclared stakes/collections and payouts.

They submitted that the Respondent requested the Applicant to provide supporting granular data and documentation for their objection, including Ledgers of collections, Ledgers of payouts, raw dump of betting and gaming activity (showing BetID, Category, Stake amount, Payout Amount, Cashout Amount), Bank statements, and

Audited Accounts. They argued that the Applicant did not provide the requested documents within the agreed timeframe, leading to the disallowance of the objection.

They maintained that the information provided by the Applicant was "not detailed, coherent and conclusive and could not be verified. They submitted that the Respondent's witnesses, RW1 Samuel Mukobe and RW3 Grace Aine Ngabirano, testified that they had access to MTN Mobile Money and Airtel Money transaction data related to the Applicant's accounts, and that the data from Pegasus Technologies showed variances. The Respondent contended that the Applicant's submitted raw data from Apollo Soft was *"not raw data but summarised data and the same cannot be relied on as authentic and the same should be disregarded."*

They cited **MKOPA Uganda Limited V URA HC Civil Appeal 7 of 2021**, asserting that *"major contradictions which go to the root of a party's case and which have not been satisfactorily explained away often indicate untruthfulness and, almost invariably, lead to the rejection of that evidence."*

The Respondent submitted that the assessments were based on the understanding that all deposits onto the platform were stakes and therefore charged Gaming tax, and that all withdrawals from the platform were payouts. They referred to **Section 48(1) of the Lotteries and Gaming Act, Cap. 334**, which states: *"An operator of a casino, gaming or betting activity issued with a license under this Act shall, in addition to taxes prescribed by law, pay a gaming tax at the rate prescribed in Schedule 4 to this Act."*

They also cited Part 1 of the 4th Schedule which provides a rate of twenty percent (20%) of the total amount of money staked less the payouts for the period of filing returns for a betting activity, and Part 2 of the 4th Schedule which provides a rate of thirty percent (30%) of the total amount of money staked less the payouts for the period of filing returns for a gaming activity. They noted that prior to 1st July 2023, the tax rate was 20% for both Gaming and Betting tax.

The Respondent defined "stakes" according to **Black's Law Dictionary, 11th Edition (2019)**, as "*money or other valuable risked on the outcome of a wager or game, often deposited with a third party (stakeholder) to be awarded to the winner."* They argued that if a punter had money in their electronic wallet, it was money deposited for gaming and betting purposes.

The Respondent submitted that they charged 15% Withholding Tax on all withdrawals from the platform, interpreting them as payouts. They cited **Section 131 of the Income Tax Act, Cap. 338**, which provides that *"a person who makes payments for winnings of betting or gaming shall withhold tax on the gross amount of the payment at the rate of 15%."*

They further cited **Section 142(2) of the Income Tax Act** regarding the collection and recovery of tax. The Respondent referred to **Black's Law Dictionary 11th Edition** for the definition of "gross income" as "a total income from all sources before deductions, exemptions, or other tax reductions." They referenced the case of **Mena Sports Consulting Uganda limited V URA TAT Application 155 of 2020**, where the Tribunal held that *"the amount on which tax should be withheld is on the gross amount paid out to the Applicant."*

The Respondent further noted that the assessment was based on reasonable estimations as the Respondent did not have access to the Applicant's system granular data which has more information. The Respondent invited the Tribunal to note that the Respondent did not have full access to the Applicant's online payouts and no payouts made by cash as a result of land based (shop) activities were provided and that id the same had been availed, it would have increased the amount of the withholding tax assessment.

The Respondent submitted that the assessment was raised under the then **Section 23 of the Tax Procedures Code Act, 2014 (now Section 25)** which is to the effect that the Respondent maty issue assessments where new information has been discovered in relation to tax payable by a taxpayer for a tax period.

The Respondent concluded by stressing that the Applicant's failure to provide sufficient information or accurate returns warranted the assessment conducted by the URA. The assessment, therefore, reflected an accurate picture of the Applicant's tax liability.

The Respondent prayed that the Tribunal dismiss the Applicant's application. They asked the Tribunal to declare the Applicant liable to pay the tax liability of UGX 28,129,806,328/= as assessed by the Respondent. They also prayed for costs of the Application to be awarded to the Respondent.

6. Applicant's Submissions in Rejoinder

In rejoinder, the Applicant argued that the tax assessments imposed by URA were excessive and unlawful. It submitted that the Applicant's software system, Apollo Soft, fully complies with the Lotteries and Gaming Act and the Income Tax Act by accurately recording all taxable transactions.

The Applicant also cited section 16 of the Lotteries and Gaming Act which mandates operators to maintain records of bets and winnings, which Apollo Soft achieves by distinguishing stakes from payouts. Witness testimony and supporting exhibits confirmed its compliance.

The Applicant contended that the Respondent's request for daily transaction-level data exceeded legal requirements. Section 15 of the Lotteries and Gaming Act mandates record-keeping but does not require operators to provide such granular data.

The Applicant cited ***Cape Brandy Syndicate v IRC,*** emphasizing that tax demands should be reasonable and based on practical information. Testimony from the Applicant's head of operations affirmed that Apollo Soft's records were sufficient for tax assessments.

Regarding withholding tax, the Applicant argued that Section 115 of the Income Tax Act applies only to actual winnings, not gross deposits. Evidence from Apollo Soft demonstrated that withholding tax was applied correctly based on net payouts.

The Applicant further challenged the Respondent's reliance on third-party data, arguing that it was incomplete and inaccurate compared to Apollo Soft's detailed records. The Tax Appeals Tribunal Act requires assessments to be based on relevant and admissible evidence, which Counsel for the Applicant claimed the Respondent had ignored.

7. Determination of the Tribunal

Having carefully considered the representations, evidence, and submissions presented by both parties this is the ruling of the Tribunal.

The key issue for determination is whether the Applicant is liable to pay the assessed taxes. In other words, whether the tax assessments issued to the Applicant—comprising Gaming Tax, Betting Tax, and Withholding Tax totaling UGX 28,129,806,328—were lawfully and accurately made under the applicable laws.

The Respondent conducted a returns examination for the period January 2023 to August 2023, following which the Respondent issued additional tax assessments for Gaming Tax of UGX 1,898,678,692, Betting Tax of UGX 6,985,710,363 and Withholding Tax of UGX 19,245,417,273. The Respondent stated that these assessments were based on "source data" obtained from third parties, specifically MTN, AIRTEL, and PEGASUS and contained summaries of deposits and withdrawals by punters. This source data was accessed through the Telecommunications Intelligence Monitoring System (TIMS), which is operated by the Government of Uganda and provides live access to different telecom systems.

The Applicant disputes the assessments, arguing that the Respondent's methodology was flawed and based on erroneous assumptions that all deposits are stakes and all withdrawals are payouts (winnings).

Legal framework

Gaming Tax and Betting Tax are governed by The Lotteries and Gaming Act, Cap 334. Particularly, Section 48(1) and the 4th Schedule of this Act are central to this dispute.

Section 48 (1) Lotteries and Gaming Act Cap 334 provides:

"1) An operator of a casino, gaming or betting activity issued with a license under this Act shall, in addition to taxes prescribed by law, pay a gaming tax at the rate prescribed in schedule 4 to this Act."

Schedule 4 to the Act sets out the rates as follows –

1. Twenty Percent (or 30% from 1st July 2023) of the total amount of money staked less the payouts (winnings) for the period of filing returns for a betting activity.

2. Thirty percent of the total amount of money staked less the pay-outs (winnings) for the period of filing returns for the gaming activity.

The Withholding Tax (WHT) in dispute is governed by **Section 131, Part XIV of the Income Tax Act, Cap 338.** Section 131 of the Income Tax Act states: *"A person who makes payment for winnings of betting shall withhold tax on the gross amount of the payment at the rate prescribed in Part XI of Schedule 4."* The prescribed rate of 15%.

The Tribunal recognizes that taxpayers bear the burden of proving that assessments are incorrect or excessive, as articulated in the case law and statutory provisions. **Section 19 of the Tax Appeals Tribunal Act, Cap 341** places the burden of proof on the Applicant to demonstrate that the tax assessment is excessive or erroneous. **Section 28 of the Tax Procedures Code Act, Cap 343** reiterates that the burden of proof lies on the taxpayer to prove that an income tax assessment is incorrect.

The Tribunal notes the Respondent's arguments that the law allows them to raise tax assessments based on the best available data. Such assessments must be based on credible, relevant, and properly obtained data. If a taxpayer challenges an assessment based on credible, relevant and properly obtained data, the taxpayer must provide substantive evidence demonstrating inaccuracies, data omissions, or procedural irregularities. Otherwise, the assessment will stand as lawful and binding.

Analysis and Findings

The core of this dispute lies in the methodology and data used for the tax assessment.

Methodology and use of third-party data

The Respondent, through RW1 Mr. Samuel Mukobe and RW3 Mr. Grace Aine Ngabirano, testified that the assessment was based on third-party data from MTN, Airtel, and Pegasus Technologies which contained summaries of deposits and withdrawals by punters. RW3 confirmed that these were treated as stakes and pay outs respectively and that this data was undifferentiated as it did not distinguish between deposits and actual stakes, or between withdrawals and actual winnings. RW3 admitted that this data did not capture "restakes", which are integral to the actual gaming activities and tax computation.

The Applicant contends that not all deposits made by punters are stakes, nor are all

withdrawals necessarily payouts (winnings). Further, the platforms of MTN, Airtel, and Pegasus, while showing deposits and withdrawals made by punters, cannot distinguish what constitutes actual stakes and payouts. AW1 Mr. Francis Xavier Drani, demonstrated before the Tribunal—using a live session on his personal betting account—that deposits could be made without stakes, and withdrawals could occur without a win. This demonstration was corroborated by AW2 Mr. Vaclav Rychtarik, Director of Apollo Soft SRO, who confirmed that the only system capable of distinguishing between stakes and payouts was Apollo Soft SRO. This evidence was not controverted by the Respondent.

The Tribunal finds that relying exclusively on third-party summaries that do not differentiate between stakes and deposits or payouts and withdrawals is methodologically unsound and does not meet the evidentiary threshold required for accurate tax assessments.

This approach contradicts the clear statutory provisions which define gaming and betting tax based on the difference between stakes and payouts, and withholding tax on actual winnings. As per the strict interpretation of tax laws, tax cannot be imposed based on assumptions or inferences.

Timing of Disclosure by the Applicant

The Tribunal notes that the Applicant did not furnish raw transactional data from Apollo Soft SRO during the audit or ADR process, despite repeated requests from the Respondent for documentary proof to support its position. RW3 Mr. Grace Aine Ngabirano testified that during the audit and objection processes, the Applicant failed to produce critical data including transactional logs and reconciliations. As a result, URA based its assessments on the available third-party data.

The data was only made available during the course of the proceedings before the Tribunal, together with reconciliations and explanations regarding time zone discrepancies.

The Respondent referred us to the case of **MKOPA Uganda Limited v. URA HC Civil Appeal 7 of 2021**, where it was held that URA is entitled to assess taxes based on available records and information from the taxpayer, even when the taxpayer has failed to fully cooperate or provide all requested information.

We acknowledge this principle, however, in the instant case the information relied on was from third parties – not the Applicant. Also, during the Tribunal proceedings, Apollo Soft provided raw data on 2nd December 2024 after a joint request by both parties. This data, AW1 explained, was daily aggregated data, included the correct stakes and payouts, and reconciliations showed a time-zone variance of two hours due to Central European Time. The Respondent's witnesses admitted to receiving Apollo Soft data but did not use it nor review it.

This late disclosure, though procedurally unsatisfactory, introduced new and more accurate evidence which the Respondent did not dispute on substantive grounds. The Tribunal finds that while the Applicant's delay in disclosure is a serious procedural lapse, once the data was produced during formal proceedings, the Respondent had an obligation to engage with and evaluate it objectively—especially when it addressed the very assumptions on which the assessments were based.

Scope of the Respondent's Assessment

The Respondent argued that the assessment, although challenged by the Applicant, in fact captured only a portion of the Applicant's total operations—specifically online transactions facilitated by MTN, Airtel, and Pegasus. The Respondent's witnesses testified that land-based (cash) transactions conducted at physical betting outlets were excluded and are subject to a separate, future assessment.

The witnesses testified that the dataset obtained from these third parties was analyzed as the least available data that could account for a portion of stakes and payouts related to the Applicant's total business. They argue that the Respondent's analysis of this third-party data revealed significant variances compared to the Applicant's total declarations, with a daily average of 14% of total business indicating an under-declaration. Crucially, Grace Aine stated that transactions involving restakes were not included in the assessments because the data obtained from Pegasus, MTN, and

Airtel did not capture restakes. The Respondent contended that, if anything, the UGX 28 billion assessment may reflect only a partial liability, with the true liability likely being higher once the land-based business is audited.

The Tribunal acknowledges the Respondent's concern regarding possible underreporting, and agrees that tax assessments are not required to be all-inclusive or exhaustive in one step. However, each assessment must stand or fall on its own merit. The issue before this Tribunal is not whether the Applicant's overall operations are fully taxed, but whether the particular assessment for January to August 2023 on online transactions was lawfully and correctly computed.

The fact that the assessment did not include land-based transactions does not justify incorrect assumptions or overstatements in the portion that was assessed. The Respondent's argument that the assessment is conservative is not, in itself, a sufficient legal justification for departing from statutory requirements regarding what constitutes taxable stakes or winnings. An incorrect basis of taxation cannot be excused by the possibility of additional future assessments.

Gaming and Betting Tax

The Tribunal reaffirms that the law explicitly requires that Gaming and Betting tax is charged on the difference between total stakes made by punters and total payouts to punters in respect of winnings.

A "stake" is defined as *"money or other valuable risked on the outcome of a wager or game, often deposited with a third party (stakeholder) to be awarded to the winner."* Crucially, not every deposit into an online gaming account is considered a stake.

The Respondent's assessment, by treating all deposits as stakes and all withdrawals as payouts, failed to account for actual stakes and payouts, including the crucial aspect of restakes. This led to an excessive and unlawful assessment of Gaming and Betting Tax, as it was not based on the actual net difference as prescribed by law.

Withholding Tax

Under Section 131 of the Income Tax Act, Withholding Tax is imposed on actual winnings, not total withdrawals. Withholding tax is applied at 15% on the "gross payouts to punters for winnings", where "winnings" means the amount gained over and above the initial stake. The tax point for WHT arises at the "moment of payout to the winning punter" and is applicable to each successful winning instance.

We refer to **Domestic Taxes v Pevans E.A Ltd & 6 others (HC ITA No. E003 of 2019)** where Kenyan High Court affirmed that *"winnings are the payments made to the punter less the amount staked"* and these winnings are subject to tax.

We also rely on this Tribunal decision in **Fortuna Limited v URA (TAT Application No. 132 of 2020)** that WHT applies when payment is made, and "winnings" refers to amounts actually won and paid out.

Further, **Mena Sports Consulting Uganda Limited V URA TAT Application 155 of 2020** reinforced that WHT should be applied to winnings over and above the stake, not on gross payout.

In this instant case, the Respondent considered all punter withdrawals from their online account as taxable "winnings" without accounting for the actual stake or for multiple restakes. Taxing punters gross withdrawals subjects the punter's original stake or deposit (capital) to tax and not just the gain derived from winning.

The Tribunal relies on established principle of tax law set out in **Kinyara Sugar Ltd v Commissioner General Uganda Revenue Authority (HCCS 73 of 2011),** the court emphasized the strict interpretation of tax statutes, stating that *"there is no room for intendment... nothing is to be read in, nothing is to be implied".*

The case of **Cape Brandy Syndicate v IRC (1921) 1 KB 64** is also applicable, reaffirming that tax must be imposed only through clear words and within the scope of legislative intent.

The Tribunal finds that the Respondent's method of treating all deposits as stakes and all withdrawals as winnings is inconsistent with the law. While the law clearly provides

for distinct tax rates for betting and gaming activities, and a change in the gaming tax rate from July 2023, the Respondent's fundamental error lay in their methodology of calculating the tax base. The Respondent applied the rates to a flawed set of gross deposits and withdrawals rather than the legally defined "stakes less payouts". This meant that their application of these rates to an incorrect and inflated tax base resulted in an erroneous assessment.

Burden of Proof

Section 19 of the Tax Appeals Tribunal Act places the burden of proof on the taxpayer to demonstrate that an assessment is incorrect or excessive. Section 28 of the Tax Procedures Code Act similarly provides that the taxpayer must prove that an income tax assessment is erroneous.

The Tribunal finds that the Applicant discharged this burden by demonstrating that the deposits and withdrawals on which the assessments are based, do not distinguish stakes and winnings, on which the taxes in question should be based. Further, the Applicant submitted Apollo Soft data distinguishing actual stakes and payouts. Specifically, AW1 presented the actual raw data files shared with the Respondent on 2 December, 2024. These files contained comprehensive daily entries structured in standardized formats such as CSV or Excel spreadsheets, with fields explicitly labelled for date, transaction ID, customer ID, bet amount, payout amount, wager status, and the time zone of recording (Central European Time, GMT+1). The data covered the entire period from January to August 2023, precisely matching the period under audit.

AW2 further corroborated this information by explaining that Apollo Soft's data reconciliation process involves strict data validation and archiving protocols to ensure no transaction records are tampered with or omitted. AW2 confirmed that this data was extracted directly from Apollo Soft's live system, blueprints for which are meticulously maintained to facilitate audits, legal inquiries, and industry compliance.

The Respondent, on the other hand, did not contest the accuracy of this data but insisted on a different format and continued to rely on third party summaries of deposits

and withdrawals. As such, the Respondent failed to rebut the alternative evidence presented by the Applicant.

Conclusion and Orders

Having considered all the above, the Tribunal finds that the Respondent's tax assessment of UGX 28,129,806,328 is excessive, erroneous, and not computed in accordance with the applicable legal framework under the Lotteries and Gaming Act and Income Tax Act.

The Applicant's delay in providing the Apollo Soft data contributed to the Respondent's reliance on third-party data. However, the availability of credible transaction-level data during the proceedings required the Respondent to re-evaluate its position, which it failed to do. The Tribunal also noted that Grace Aine confirmed that the TIMS system (the third-party data source) did not have visibility of the platforms' actual stakes and withdrawals for wins, which could only be obtained from the Apollo Soft system.

The fact that the assessment represents only 14% of the Applicant's total operations and excludes land-based cash transactions does not cure the legal defects in the methodology used for the assessed portion. Each assessment must be legally sound in its own right. The Respondent is at liberty to issue a separate and independent assessment for land-based (cash) operations, if appropriate, however, that question is not before this Tribunal. We stand guided by High Court decision in **Kalungi Estates Ltd v Uganda Revenue Authority Civil Appeal 34 of 2025.**

IT IS HEREBY ORDERED THAT:

1. The tax assessment totaling UGX 28,129,806,328, is set aside as it is legally flawed and excessive.
2. The matter is remitted back to the Respondent for a proper review and recalculation of the tax liability for the period January to August 2023. The Gaming and Betting taxes should be computed based on the net difference between stakes and payouts for winnings, not merely on gross deposits or withdrawals, and the withholding tax should be based on winnings in accordance with Section 48 and the 4th Schedule of the Lotteries and Gaming Act, and Section 131 of the Income

Tax Act. The Respondent should use the Apollo Soft transactional data submitted during these proceedings.

3. The Respondent should verify the Applicant's additional payment of Shs. 4,700,000,000 as well as the UGX 8,752,159,033/= collected from punters' deposits via Agency Notices and offset the amount against the Applicant's recalculated tax liability.
4. The Respondent should lift all Agency Notices, and is restrained from issuing Agency Notices, on the deposit collection accounts of punters held with MTN, Airtel, and Pegasus regarding the disputed tax assessment of UGX 28,129,806,328/=, as these funds do not belong to the Applicant.
5. Each party to bear its own costs.

DATED at Kampala this 5th day of June ,2025.

MS. PROSCOVIA REBECCA NAMBI
MEMBER

MRS. STELLA NYAPENDI CHOMBO
MEMBER

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APLICATION NO. 251 OF 2024

MASSALIA-SMC LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. PROSCOVIA REBECCA NAMBI, MRS. STELLA NYAPENDI

RULING

I have had the opportunity of reading in draft, the ruling of my colleagues, and wish to dissent as follows.

The key issue for determination is whether the Applicant is liable to pay the assessed taxes, namely gaming tax, betting tax, and withholding tax, amounting to Shs. 28,129,806,328.

The Respondent conducted a returns examination for the period January 2023 to August 2023. Following this, the Respondent issued tax assessments to the Applicant totaling UGX 28,129,806,328/=. This total assessment was broken down as follows:

(i) Gaming Tax: UGX 1,898,678,692
(ii) Betting Tax: UGX 6,985,710,363
(iii) Withholding Tax: UGX 19,245,417,273

The Respondent has submitted that the above assessments, which were for the period January – August 2023 were based on the following:

(i) Gaming tax at a rate of 20% of the total amount of money staked less payouts for betting activity as per Part 1, Schedule 4 of the Lotteries and Gaming Act;

(ii) Gaming tax at a rate of 20% (for periods before 1 July 2023) or 30% (for periods after 1 July 2023) of the total amount of money staked less payouts as per section 48 and part 2, schedule 4 of the Lotteries and Gaming Act;

(iii) Withholding tax at a rate of 15% on the winnings of betting or gaming as per section 131 of the Income Tax Act.

The Applicant has argued that the Respondent's assessment is excessive as the Respondent imposed betting and gaming tax on gross amount and not net amounts as required by the law. On the other hand, the Respondent argued that the Applicant did not provide adequate information and in the absence of this information, the Respondent used the best available data to assess the Applicant.

The Applicant has also argued that the Respondent's requirement for transactional data was excessive as Section 15 of the Tax Procedure Code Act which mandates record-keeping does not require operators to provide such granular data.

Therefore, the determination of this dispute rests on whether the Respondent's assessment was excessive and if so, whether the Applicant has provided the Respondent with the right information to enable the Respondent determine the correct liability.

Whether the assessment is excessive

By their own admission, the Respondent stated that they treated all withdrawals as payouts and all deposits as stakes. Further, RW1, in his testimony, stated that it was not correct to assess on the basis of withdrawals and deposits. However, he argued that this was as a result of the Applicant's failure to provide authentic information. Further, the Respondent stated that they relied on the best available information, being the third-party data from airtel, MTN and Pegasus as the Applicant failed to provide information of stakes and bets. Further, RW3 testified that the third-party platforms could not distinguish between deposits and stakes or between pay outs and simple withdrawals, and that the lack of stake-specific data was a limitation.

Therefore, we can reasonably conclude that it is possible that the assessment was excessive since the Respondent was unable to ascertain the stakes and payouts and arrive at the net position for gaming and betting tax purposes.

The next question to be answered is whether the Respondent justified in issuing the assessment.

Were the Respondent's actions justified?

Every application that is filed before this Tribunal invariably challenges the Respondent's assessments as either excessive or unlawful or both.

In all cases, it is the duty of the Applicant to demonstrate that the assessment was excessive and provide an alternative position or view, backed by substantive evidence. This is achieved through the provision of the appropriate information to counter, reduce or extinguish the Respondent's assessment.

Specifically, the law places the burden of proof on the Applicant to demonstrate that the assessment was incorrect or excessive.

From the start of this dispute, right from the returns examination on or about November 2023, through the objections process that culminated in the objection decision of August 2024, the Respondent asked the Applicant to provide transactional information to support its returns. The Applicant failed to provide the information.

The Respondent sent several emails to the Applicant to this effect on 2, 12 and 24 April 2024. Further, in an email dated 1 May 2024, the Respondent's objections officer requested for the following:

(i) Ledger of collections;
(ii) Ledger of payouts;
(iii) Raw dump of the Applicant's betting and gaming activities showing stake amount, payout amount, cashout amount;
(iv) Bank statements for the period objected to; and
(v) Audited accounts

It should be noted that the information requested for by the Respondent is the kind that person keeps and maintain in the ordinary course of their businesses. There was nothing outlandish or ridiculous about the Respondent's request.

To date, the Applicant has not provided any of the above information.

At the hearing, the Applicant's witnesses, specifically, AW1 testified that they provided the Respondent with raw data. Further, both AW1 and AW2 testified that the Applicant does not have access to their information as this is maintained by Apollo Soft, a third-party software provider who provides the betting and gaming platform to the Applicant.

However, during cross examination and when asked by the Tribunal, the Applicant's witnesses stated that what they called "raw data" was in fact a summary of daily data and that they could not provide transactional data.

Below is an extract of the Applicant's testimony.

AW 1

"Respondent's counsel (RC): You mentioned that Apollo Soft has a duty to remit data to the Applicant, did the Applicant request for the gaming and betting transactional data for the purposes of this case?

AW1: yes, they did.

RC: what did you provide?

AW1: Eight month's raw data for January 2023 – August 23

RC: Did this data contain day to day transactions?

AW1: All data is per day. It is not transaction by transaction but aggregate data for the entire day."

AW2

"RC: Please confirm whether the Applicant or Apollo Soft ever provided to the Respondent data indicating stakes and payouts on a transaction-by-transaction basis.

AW2: Data was provided but not on transactional basis.

RC: Are you aware that the law requires the Appt to maintain records including electronic data for a period of at least 5 years?

AW2: Yes"

By their own admission, the Applicant stated that they did not provide raw data to the Applicant but instead provided daily aggregated data.

What is transactional data and why is it important for tax authorities?

Transactional data is information about specific events or activities that happen during transactions. It records every detail of the events, providing a comprehensive view of each transaction.

Within the context of the Applicant's business, transactional data would include each and every amount staked, paid out, re-staked, withdrawn and deposited daily. In other words, it can be likened to a bank statement.

Without this information, the Respondent could not verify the information in the Applicant's gaming returns or extent to which the MTN/ Airtel deposits exceeded the stakes or withdrawals exceeded the payouts, if at all.

Therefore, we agree with the Respondent that they were incapable if verifying the authenticity of the data provided by the Applicant.

On the other hand, the Applicant expects the Respondent to accept as gospel truth, their aggregated data. This aggregated data was presented in an excel worksheet that is not linked to any raw data. The Respondent cannot even sample or test the validity of data not even for a month or two.

The Applicant has argued that Respondent's requirement for transactional data was excessive as Section 15 of the Tax Procedures Code Act mandates record-keeping but does not require operators to provide such granular data.

We do agree with this view.

In addition to the above, section 15 of the Tax Procedure Code Act provides as follows:

"Accounts and records

(1) Subject to subsections (2) and (4), every taxpayer shall for the purposes of a tax obligation:

–

(a) maintain, in the English language, records including in electronic format, as may be required to determine the taxpayer's tax liability under a tax law;

(b) maintain the record so as to enable the taxpayer's tax liability under the tax law to be ***readily ascertained****; and*

(c) retain the record for five years after the end of the tax period to which it relates or other period as specified in the tax law."

This provision requires taxpayers to maintain information for at least five years. This information should enable the taxpayer's liability to be **readily ascertained.**

Did the Applicant provide information that allowed for its tax liability to be readily ascertained? The answer is no. The taxpayer did not provide the Respondent with any transactional data. They only provided daily aggregated data which cannot be authenticated.

On 20 February 2025, the Applicant provided the Tribunal with the aggregated data that the Applicant submitted to the Respondent. A screenshot of data from the 1 – 4 January 2023 is shown below.

DATE	STAKE	PAY OUT
01/01/2023	151943000	128066500
02/01/2023	187284500	87521600
03/01/2023	225686700	83705700
04/01/2023	167413000	136449900

As shown above, the above data shows that on 1 January 2023, there were total stakes worth Shs. 151,943,000 and pay outs worth Shs, 128,066,500. In an ideal situation, the gaming and betting tax should be applied to the net position of Shs. 24 million. However, the Applicant did not provide the transactional data in support of the above figures. It should also be noted that the above information was provided to the Respondent in December 2024, four months after the objection decision and one year from the start of the audit. Why did it take that long?

Further, AW 1, in his testimony, stated that there Apollo Soft can have 3 – 5 million daily transactions (i.e. stakes, re-stakes, payouts etc.) just for the Applicant. This means that the daily amounts shown in the above table are a summation of millions of stakes and payouts, which the Applicant is unable to provide but would like the Respondent to trust the accuracy of the summarised data without question.

These are huge volumes of transactions that are not visible to the Respondent and cannot be provided by the Applicant. In effect, the Applicant has chosen to give to the Respondent the stick end of the lollipop while leaving succulent and flavourful part in its mouth.

This leaves the Respondent no alternative.

On the other hand, at the hearing, the Respondent, ably demonstrated to the Tribunal transactional data of deposits and withdrawals from MTN, Airtel and Pegasus for the period under review. In fact, at the hearing, the Applicant stated that they did not dispute the Respondent's source data.

It is also important to note that the period for which data was requested was only an 8-month period from January – August 2023, for a returns examination that was carried out in November 2023. Therefore, the information requested for was not even a year old. Not even this could be provided, despite the TPCA requiring the Applicant to maintain its records for five years.

Further, Section 55 (2) of the Lotteries and Gaming Act imposes penal tax tax equal to double the amount of the tax payable on a person who fails to maintain proper records in accordance with Regulations made under this Act. This shows that a failure to maintain proper records is a taken so seriously that it warrants such punitive penal tax.

Apollo Soft

The Applicant delegated the responsibility for their records to a non-resident third party service provider. However, responsibility, particularly for legal duties cannot be delegated. While a taxpayer may delegate or outsource functions concerning the keeping and maintenance of its records, they remain solely responsible and accountable for their records and their taxes, which they have failed to be.

Therefore, I find the Applicant to be either untruthful and/ or negligent.

As stated by the High Court in ***MKOPA Uganda Limited v URA HCCA 7 / 2021***:

"Major contradictions which go to the root of a party's case and which have not been satisfactorily explained away often indicate untruthfulness and, almost invariably, lead to the rejection of that evidence".

In the present case, the Applicant's failure to provide transactional data goes to the root cause of its case. It is the Applicant's duty to prove the excessiveness of the Respondent's assessment and in my view, they have not discharged their burden. Behaviour where a taxpayer cherry-picks information to give to the Respondent cannot and should not be overlooked. The Respondent has a statutory duty to collect taxes and taxpayers must facilitate this duty by providing information that is accurate, complete and timely.

The case of ***Red Concepts Limited v URA App No. 38 of 2018*** is instructive in this regard. In this case, the Tribunal held:

"Where a statute requires one to give information or other particulars, the said information should be accurate to enable public authorities act on it. If the Information is misleading, the Tribunal cannot turn a blind eye to it as this would tantamount to condoning an illegality and perpetrating fraud.... taxpayers should facilitate that (duty) by giving correct information."

I am also reminded of the words of ***Frank Underwood***, the protagonist in the highly acclaimed televisions series ***"House of Cards"***. He said:

"There's no better way to overpower a trickle of doubt than with a flood of naked truth."

In the present case, the Applicant has failed to flood the Respondent with the naked truth, which is the raw transactional data. The Applicant did not even present the underlying workings in support of the figures disclosed in its tax returns. This should have been the bare minimum. Therefore, the Respondent has every reason to remain doubtful.

It is also worth noting that the Applicant's business is not a run-off-the-mill business enterprise – it is a business that transacts in millions of shillings daily, billions of shillings monthly. This is not "Mukasa and sons" or "Bob owa amawulire". This is a high volume, high value business that ought to have taken its statutory duties seriously and responsibly.

Taxes paid after the assessment was raised and agency notices

The Applicant submitted that their returns for the period did not accurately reflect the Applicant's tax position. This is because the Applicant omitted certain transactions that were conducted in varying time zones.

Specifically, the Applicant submitted that upon their review of the Apollo Soft data, they discovered that two hours of betting data daily (22:00 - 24:00 hours) was eliminated and this was corrected, leading to an additional liability of Shs. 4,700,000,000

AW2 in his witness testimony stated that whilst the Applicant did not amend their tax returns to correct this error, they went ahead and paid the additional tax liability.

Isn't this an example of why the Applicant's aggregate data cannot and should not be relied upon? If there was an omission leading to an additional liability of Shs 4.7 billion, what other omissions or errors are lying undiscovered due to the Applicant's failure to provide the transactional data?

That said, the payment of the Shs. 4.7 billon has not been controverted by the Respondent and therefore, it is only fair that the same is verified and offset against the Applicant's tax liability.

Further, the Applicant stated that the Respondent collected Shs. 8,752,159,033 from the punters' deposits through agency notices, which the Respondent did not controvert.

On the whole, I find that the Applicant failed in their duty, to provide the Respondent with the primary, daily transactional data, needed to verify or validate the aggregate daily data that the Applicant wishes the Respondent to rely on. Therefore, the Applicant failed to discharge the burden of proof.

Therefore, I would have dismissed this application with costs to the Respondent. This is because remitting the matter back to the Respondent to review the same without using any transactional data, is as good as sending the Respondent on a wild goose chase.

Obiter

This is a classic case of information asymmetry which jeopardises the Respondent's ability to execute its tax collection mandate. To minimise tax leakage, the Government is urged to expedite the centralisation of all gaming and betting payments via the Central Bank and monitored by the Uganda Revenue Authority. This will improve transparency and accountability within the gaming and betting sector.

The Respondent is also advised to review and update its gaming returns to ensure that all sections within the return reconcile to each other and that supporting schedules / workings are uploaded with each respective return, which should also reconcile to the sections in the returns.

Dated at Kampala this 5th day of June 2025.

CRYSTAL KABAJWARA
CHAIRPERSON